

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5765 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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ASLAMKHAN @ BADO AZADKHAN ASHRAFKHAN PATHAN

Versus

COMMISSIONER OF POLICE

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Appearance:

MS KRISHNA U MISHRA for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/12/1999

ORAL JUDGEMENT

#. The Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on April 7, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the PASA

Act.

#. The grounds of detention indicate that the authority concerned took into consideration three offences registered against the detenu under Section 379 of Indian Penal Code. The authority also considered statements of two anonymous witnesses. The detaining authority recorded. The detaining are detrimental to public order and, therefore, he is required to be detained under the PASA Act to immediately prevent him from pursuing his illegal and anti-social activities.

#. Ms. Banna Dutt, appearing for Ms. K.U. Mishra, learned advocate for the petitioner, has urged that there is improper exercise of powers under Section 9(2) of the PASA Act. She submitted that the statements of anonymous witnesses were recorded on 5th and 6th April, 1999, the same were verified on 7th April, 1999 and the order was passed on that day itself by the detaining authority. The detaining authority, therefore, had no time to arrive at the subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act and, therefore, the right of the detenu of making an effective representation is infringed. This would render the order illegal and, therefore, the petition may be allowed by setting aside the order of detention.

#. Mr. Patel, learned Assistant Government Pleader, has opposed this petition.

#. The affidavit filed by the detaining authority generally deals with the question of subjective satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act.

#. In view of the rival side contentions, it requires to be determined as to whether the subjective satisfaction recorded by the detaining authority for exercise of powers under Section 9(2) can be said to be genuine.

6.1 The statements were verified on 7th April, 1999 and the order of detention came to be passed on the very same day. There was, therefore, no time lag between these two events which could have made possible for the detaining authority to arrive at a genuine subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act. The powers under Section 9(2) of the PASA Act are required to be exercised in public interest and for that purpose, the authority has to satisfy itself that the incidents narrated by the anonymous witnesses

are correct and the fear expressed by these witnesses qua the petitioner is genuine and that, therefore, it is necessary to exercise the powers under Section 9(2) of the PASA Act. This will have a bearing not only on the question of public interest, but also on the right of the detenu of making an effective representation which is guaranteed by the Constitution and any error or lapse found in exercise of such power would render the order of detention bad in law. The subjective satisfaction required to be recorded by the detaining is not by way of an empty formality and the authority has to take steps apart from interrogating the witnesses to satisfy itself that the incidents narrated by the witnesses and the fear expressed by the witnesses are correct and genuine. If the verification is on 7th April, 1999 and the order is passed on the very same day, there is no reasonable time lag between these two dates which would enable the detaining authority to undertake this exercise. In this regard decision in case of Kalidas Chandubhai Kahar v. State of Gujarat [1993(2) GLR, 1659] based on similar facts may be referred to.

#. The affidavit in reply also does not disclose as to what exercise was undertaken by the detaining authority for arriving at a subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act. It is true that the subjective satisfaction cannot be judged by a Court and the question whether the material before the detaining authority was sufficient or not cannot be gone into by the Court. But whether there was cogent material to arrive at the subjective satisfaction has to be examined and in absence of any such material, the subjective satisfaction cannot be said to have been genuinely arrived at.

#. It transpires from the grounds of detention that the detaining authority branded the detenu as 'dangerous person'. However, the detaining authority, in the affidavit in reply, has stated in paragraph 5 as under :

"I say that in the present case, amongst relevant materials, I have carefully examined the documents relating to the 3 criminal cases registered against the detenu and from those materials and from the statements of witnesses, it is clear that the detenu falls within the definition of 'bootlegger' as defined u/s.2(b) of the PASA Act."

This reflects that the detaining authority has not applied mind to the facts of the case even while filing

the affidavit before this Court.

#. In view of the above discussion, the petition is allowed. The order of detention in respect of the petitioner-Aslamkhan @ Bado Azadkhan Ashrafkhan, dated 7th April, 1999, is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[ A.L. DAVE, J. ]

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